

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARSHALL COBB, SR.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-01303-JPH-DML
)	
BENJAMIN Judge,)	
KATHLEEN BURNS Prosecutor,)	
CURTIS HILL Attorney General,)	
LORETTA RUSH Judge,)	
KIT C. DEAN CRANE Judge,)	
BARBARA HARCOURT Judge,)	
STATE OF INDIANA,)	
NANCY VAIDIK Judge,)	
)	
Defendants.)	

**ORDER DENYING REQUEST TO PROCEED ON
APPEAL IN FORMA PAUPERIS**

Plaintiff Marshall Cobb seeks leave to proceed on appeal without prepaying the appellate fees. Dkt. [28]. However, an appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in "good faith." 28 U.S.C. § 1915(a)(3). "Good faith," in the context of § 1915(a)(3), refers to the "more common legal meaning of the term, in which to sue in bad faith means merely to sue on the basis of a frivolous claim." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). In other words, § 1915(a)(3)'s "good faith" determination is not about the plaintiff's sincerity in requesting appellate review. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). A sincere litigant still lacks objective "good faith" under § 1915(a)(3) if his claim is one

that "no reasonable person could suppose to have any merit." *Lee*, 209 F.3d at 1026.

Under this standard, Mr. Cobb's request to appeal *in forma pauperis* must be denied. He seeks to appeal the Court's judgment that this case is dismissed without prejudice for failure to state a claim. But as the Court's dismissal order explained, Mr. Cobb's show cause response failed to remedy the deficiencies identified in the Court's screening order. Dkt. 15. Mr. Cobb's complaint and show cause response both failed to state a plausible claim. Dkt. 1; dkt. 13. The Court was therefore required to dismiss this case. *See* Fed. R. Civ. P. 12(h)(3); *Evergreen Square of Cudahy v. Wis. Hous. & Econ. Dev. Auth.*, 776 F.3d 463, 465 (7th Cir. 2015). There is no objectively reasonable argument that Mr. Cobb's proposed appeal has merit, so this appeal is not taken in "good faith," and the motion for leave to proceed on appeal *in forma pauperis*, dkt. [28], is **DENIED**.

SO ORDERED.

Date: 1/26/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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